



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

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August 26, 2019

Patrick O'Keefe
Right.US
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Re: Right.us, COPP-2019-AO-002
Services as In-kind and Earmarked Contributions to Candidates

Dear Mr. O'Keefe:

I write in response to your inquiry of August 23, 2019, requesting the Commissioner of Political Practices' (COPP) advisory opinion regarding services provided to candidates by Right.us. You raised the following issues and offered the following facts to assist the COPP in preparing the Advisory Opinion:

“Background

Right.us is a service for donors to find and donate to like-minded candidates.

Right.us provides a convenient way for donors to go to a single website and browse or search for campaigns and causes. Once a donor finds a campaign or cause they'd like to support, the donor has the ability to then make a donation. When a donor makes a donation, they pay a 3.75% fee to Right.us which goes directly to the payment service provider to cover applicable platform and processing fees. As an example, when a donor makes a \$100 donation, they are charged \$103.90 and then \$100 is sent to the intended recipient(s)¹.

¹ 3.75% applied to \$100 would be \$103.75. Charging \$103.90 applies the 3.75% to the processing fee as well as the contribution.

Recipients cannot sign-up for Right.us. Recipients are added as a convenience for donors. Recipients do not pay fees to be included. Recipients do not pay fees to receive donations. Recipients receive 100% of a donation sent by donor(s).

Right.us partners with a payment service provider utilized by most campaigns in each state. Because of this relationship directly with the payment service provider, Right.us has the ability to allow donors to contribute directly into the accounts of those campaigns. At the federal level, Right.us also allows donors to donate to candidates not using the payment service provider and in those cases writes checks directly to the candidates from trust accounts not used for any other operation or use.

Assertions/Questions

1. Recipients do not incur any costs associated with Right.us and do not have any relationship with Right.us. Recipients should report total donation from each donor (e.g. a donor donates \$100 as described above, the recipient reports \$100). The FEC has said that there are no fees to report as this is similar to receiving a check by mail or bill-pay service at the federal level. We believe that Right.us should be treated similarly at the state level too. Do you agree with this assertion?
2. Because pages are not paid for by any candidate or committee, the only disclaimers necessary are those detailing the general reporting requirements for committees in the given state. No paid for by disclaimers are necessary because it would be misleading to state that a candidate or committee paid for a page that they did not pay for. Do you agree with this assertion?
3. Because Right.us does not advocate for or against any campaign and does not participate in any form of electioneering, Right.us is a technology and not a political committee. Right.us does not have any reporting requirements at the federal level. Right.us should also not have any reporting requirements at the state level. Do you agree with this assertion?
4. Are conduit PAC contributions and earmarking by those PAC's legal in your state? Right.us is not a conduit PAC, but questions have been asked regarding conduit PACs and I want to ensure I understand the laws in your state.”

ADVISORY OPINION

The Commissioner is limited to issuing an advisory opinion that addresses “the applicability of a rule or statute administered by the Commissioner.” Mont. Admin. R. 44.11.102.

SHORT ANSWERS

1. No. The costs associated with processing the contribution are an in-kind contribution of paid services by Right.us to the candidate, and the candidate must report and disclose the full cost of the initial donor’s monetary contribution and the Right.us political committee services contribution to their campaign.
2. No. As explained below Right.us is a political committee which must include attributions on their website disclosing who paid for the construction and maintenance of the website and the services provided by the committee.
3. No. As explained below Right.us would be a political committee under Montana law, and subject to reporting and disclosure requirements.
4. No. Earmarked contributions are required to be reported and disclosed by both the political committee and the candidate committee.

DISCUSSION

Based on the facts provided, Right.us’s activities in accepting contributions for candidates and providing paid services to those candidates would result in the organization being designated as a political committee subject to the reporting and disclosure requirements of Montana law. A political committee is defined as a “combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure...to support or oppose a candidate”, Mont. Code Ann. § 13-1-101(31)(a)(i) (2017). Based on the facts presented, Right.us would most likely be classified as an independent political committee. Mont. Code Ann. § 13-1-101(24).

The Commissioner notes that not all conservative candidates that have filed for elected office are available to contribute to on the Right.us website. As stated in the facts presented, candidates may not “sign up” or opt into their service like a candidate can with similar paid services (Act Blue or WinRed). There is some “winnowing” of

candidates being performed on the front end by Right.us as a donor cannot contribute to all or “any” conservative candidates for the election². By choosing which conservative candidates the platform will allow contributions to be directed to and paying for their processing fees, Right.us is supporting or opposing candidates for office, Mont. Code Ann. §§ 13-1-101(31)(a)(i) and (50). Further, by excluding progressive candidates for office from the platform and only providing paid services to conservatives, Right.us is supporting or opposing only conservative candidates for elected office, or a political party. Mont. Code Ann. § 13-1-101(50)(b). The distinction being that WinRed and Act Blue are services that candidates can opt into, and pay the organizations for their processing fees, here Right.us is paying those processing fees for their candidates.

Right.us would be required to electronically file a statement of organization within 5 days of making an expenditure to the “payment service provider” of 3.75% of the donor’s contribution for the processing fees of a candidate contribution. Mont. Code Ann. § 13-37-201(2)(b). The political committee would also provide the COPP with the name, office sought and party affiliation of each candidate to which Right.us provides its contribution services. Mont. Admin. R. 44.11.201(1)(f).

Reporting Earmarked Contributions

The Right.us independent political committee would be responsible for periodically reporting the full amount of the earmarked contribution, the fact that it was earmarked, from whom it was received (including occupation and employer), the candidate to which the contribution was directed, and the costs (or processing fee) incurred and paid by the committee, and provide the information to the candidate, Mont. Code Ann. §§ 13-37-229 or 232, Mont. Admin. R. 44.11.404(3)(a). The candidate would be responsible for reporting the entire monetary contribution as “earmarked” and the Right.us processing fee in-kind contribution, the original contributor including

² For example: Virginia US House District 07 lists Tina Ramirez as the only candidate for the republican primary election. <https://right.us/directory?location=VA> (last accessed August 26, 2019). Presently, there are two additional republican candidates for the Virginia House District, Craig Ennis and Peter Greenwald. Similarly, in the Montana US House District, Right.us lists Corey Stapleton and Matt Rosendale as candidates to which a donor may contribute but does not list the two additional conservative candidates for the House District, Joe Dooling and Tim Johnson.

occupation and employer, and Right.us's full name and mailing address as the intermediary committee of the earmarked contribution and provider of the in-kind services contribution to the candidate, *id.* (3)(b).

In-Kind Contribution Reporting

The payment of the "platform and processing fees" by the contributor to Right.us is a contribution to the political committee by the donor. Right.us political committee in turn pays the payment service provided. That payment to the service provider is an "in-kind" donation of services to the candidate. Mont. Admin. R. 44.11.403, 501(2), 503 and 504. Similarly, the time spent processing a check from the committee to the candidate who chooses not to use the service provider is a reportable in-kind contribution of services to the candidate. The Right.us political committee also has a contribution limit of the amount it may give to each candidate depending on the office sought. Mont. Code Ann. § 13-37-216 and Mont. Admin R. 44.11. 227.

Attribution

As a political committee, Right.us engages in supporting or opposing certain conservative candidates for elective office. Montana law requires that the website contain an attribution informing Montana electors who is paying for the costs of maintaining and administering the website. Mont. Code Ann. §§ 13-1-101(14)(a)(ii) and 13-35-225 and Mont. Admin. R. 44.11.601. Depending on whether Right.us is a corporation or union, or other organization, different attribution requirements apply please consult the statute or rule.

CONCLUSION

We appreciate the opportunity to discuss how the law applies the provision of services to a candidate's campaign, and how those contributions must be reported and disclosed by the contributor, intermediary committee and the candidate.

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LIMITATIONS ON ADVISORY OPINION

This letter is an advisory opinion based on the specific written facts and questions as presented above. This advisory opinion may be superseded, amended, or overruled by subsequent opinions or decisions of the Commissioner of Political Practices or changes in applicable statutes or rules. This advisory opinion is not a waiver of any power or authority the Commissioner of Political Practices has to investigate and prosecute alleged violations of the Montana laws and rules over which the Commissioner has jurisdiction, including alleged violations involving all or some of the matters

DATED 29th day of August, 2019.



Jeffrey A. Mangan
Commissioner of Political Practices